Again, it seems to me that section 37(d) is to be read as part of the section as a whole and in particular in the light of paragraph (f) which relates to ships and aircraft, paragraph (g) which relates to premises and paragraph (h) which relates to vehicles. Paragraph (h), in particular, provides that where a drug is found concealed in a specially constructed compartment in a vehicle it shall be deemed to have been so concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle for the time being. I find it impossible to draw any distinction between being in charge of a vehicle and being found to have had a vehicle in custody or under control. Knowledge that a thing is concealed necessarily pre-supposes knowledge of its existence but does not pre-suppose knowledge of its nature. In the circumstances it is impossible to avoid the conclusion that had it been the intention of the Legislature that a vehicle should come within the scope of paragraph (d) then paragraph (h) would not have been enacted because on such a construction of paragraph (d) the bare fact of finding the drug in the vehicle would create an even wider presumption against the person having custody or control than is created by paragraph (h) in the case only where the drug is in a hidden compartment in the vehicle. Or in other words the very absurd result would be reached that there would be a much stronger and wider presumption against the accused in the case where there was no concealment in a specially constructed compartment than in a case in which there was such concealment.

I am thus compelled to the conclusion that a vehicle in which a drug is being carried does not *ipso facto* fall within the words "anything whatsoever containing any dangerous drug" and that therefore in such a case the presumption contained in section 37(d) does not arise. I am not saying for one moment that a drug may not be found in a vehicle in such circumstances as would in the absence of disproof or explanation lead the Court to the conclusion, quite independently of any statutory presumption, that it was in the possession of the person in control of the vehicle. But that is not the case here. The learned President has made it clear that apart from the presumption he would not have convicted and accordingly the conviction cannot stand.

I am fortified to some small extent in the view I have taken by a consideration of the case of *Dhulipala Kameswara Rao v. Wyles*[2]. That case was very different from the present one. The appellant had been convicted for contravening a statutory regulation which requires a person in lawful possession of dangerous drugs to keep them when not in use in a locked receptacle. The appellant had left a quantity of drugs in an unlocked leather bag which he left in a motor car the doors of which were locked. The Divisional Court dismissed the appeal against conviction and Lord Goddard C.J. observed:—

"No one, I think, would call a motor car a receptacle for drugs any more than he would call a house a receptacle for them . . . ."

"I put my judgment entirely on the ground that a motor car cannot be regarded as a receptacle . . . ."

In the present case the conviction is set aside. There will be an Order of acquittal and discharge and the fine, if paid, will be refunded.

*Appeal allowed.*

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## PUBLIC PROSECUTOR v. IDRIS

**[A. Cr. J. (Thomson J.) September 29, 1955]**

**[Ipoh — Criminal Appeal No. 57 of 1955]**

*Criminal Procedure Code (Cap. 6), ss. 173A and 294 — Binding over — Sentence.*

**The accused in this case was charged with negligent driving and pleaded guilty. The learned Magistrate bound over the accused for six months under s. 294 of the Criminal Procedure Code. Against this order the Public Prosecutor appealed.**

**Held: s. 294 of the Criminal Procedure Code only applies in the case of an offence punishable with imprisonment and as the offence in this case was punishable with a fine only, the order was wrongly made and must be set aside.**

**Observations on the difference between binding over under s. 173A and s. 294 of the Criminal Procedure Code.**

**[Editorial Note: The only provision for binding over in the Singapore Criminal Procedure Code, 1955, is s. 255(3)].**

MAGISTRATE'S CRIMINAL APPEAL.

*A. P. Jack* (Federal Counsel) for the appellant.

Respondent in person.

**Thomson J.**: — The accused in this case was charged before the Magistrate at Cameron Highlands with negligent driving in contravention of section 4(2) of the Motor Vehicles (Driving Offences) Proclamation. He pleaded guilty. The Magistrate took the view, with which I entirely agree, that the offence was not a serious one and bound the accused over for six months under section 294 of the Criminal Procedure Code. Against that Order the Public Prosecutor appealed.

I set the Order aside because section 294 only applies in the case of an offence punishable with imprisonment and by reason of section 31 of the Proclamation a first offence under section 4(2) is punishable with fine only. In substitution for the Order, I imposed a fine of $5 and ordered that the conviction be endorsed on the accused's driving licence,

such endorsement being mandatory by reason of section 4(3) of the Proclamation.

The case in itself was of no importance but for the benefit of Magistrates I feel I should make a few observations on the subject of sections 173A and 294 of the Criminal Procedure Code.

There is a certain amount of overlapping between the two sections in the sense that very often a case may be appropriately dealt with under either of them. There are, however, certain differences which must be carefully observed.

Section 173A is applicable in all cases triable in the Magistrate's Court irrespective of the nature of the prescribed punishment and it is to be observed that where it is proposed to exercise the powers given by it, the Court should not proceed to conviction.

Section 294 on the other hand, which only applies in the case of adult offenders, can only be made use of where a person has been convicted and where his conviction is for an offence punishable with imprisonment without the option of a fine.

I do not wish to lay down any hard and fast rule, which in any event would be difficult to prove, but Magistrates would be well-advised only to make use of section 294 where an offence which is generally of a serious nature and which is punishable with imprisonment has been committed by an adult offender (i.e. an offender of 16 years or over) and where it is considered desirable to place him on probation.

All other cases which are thought to call for unusually lenient treatment can be more appropriately dealt with under the provisions of section 173A. In this connection, however, it is to be observed that generally speaking where an offence has been committed it calls for punishment and that in the case of the numerous statutory offences punishable by a fine the appropriate way of dealing with cases that are not in themselves very serious is the imposition of a fine adjusted in amount according to the view taken of the seriousness of the offence.

*Order accordingly.*

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## PUBLIC PROSECUTOR v. WOO FONG

**[Cr. Rev. J. (Thomson J.) October 7, 1955]**

**[Ipoh — Criminal Revision No. 33 of 1955]**

*Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in carrying on a public lottery — Characters lottery — Charge.*

**The accused was convicted on the following two charges: "Charge No. 1 — That you at about 3.15 p.m. on 7.5.55 at Yau Tet Shin Street, Ipoh, in the State of Perak were found assisting in carrying on a public lottery, to wit, 1000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance No. 26 of 1953. Charge No. 2 — That you at about the same time, date and place were found assisting in carrying on a public lottery, to wit, 10000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance No. 26 of 1953". On each charge he was fined $450 or three months imprisonment in default of payment.**

**It appeared that in the transactions in this case, persons desiring to participate staked amounts of money on what they considered would be the last three digits or the last four digits on the number of the ticket which proved to be the winning ticket in the sweepstake organised by the Singapore Turf Club in connection with a particular horse race to be run at Singapore on May 7, 1955. The question considered on the revision was whether the accused was properly convicted of two offences or whether there was only one offence.**

**Held: (1) where an operation is conducted by a single person in relation to a single specific sweepstake then there are not a number of separate and distinct lotteries according to whether two or three or four digits are staked upon but the whole operation constitutes a single lottery; (2) therefore there was only one offence in this case and the accused was not properly convicted of two offences.**

### CRIMINAL REVISION.

**Thomson J.** : — This case raises a question of some importance relating to the so called "characters lottery" which since it was imported from America some five years ago has become an extremely popular indulgence of the inhabitants of this country, or at any rate of so much of this country as lies to the north of the Bernam River.

The accused was convicted in the Magistrate's Court at Ipoh on the following two charges :—

**"Charge No. 1. That you at about 3.15 p.m. on 7.5.55 at Yau Tet Shin Street, Ipoh, in the State of Perak were found assisting in carrying on a public lottery, to wit, 1000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance 26 of 1953.**

**Charge No. 2. That you at about the same time, date and place were found assisting in carrying on a public lottery, to wit, 10000 character lottery and that you have thereby committed an offence punishable under s. 4(1)(c) of Ordinance 26 of 1953".**

On each charge he was fined $450 or three months imprisonment in default of payment.

The only question to be considered is whether the accused was properly convicted of two offences or whether there was only one offence, and that in its turn depends on the question of whether he was assisting in the conduct of a single lottery or of two separate and distinct lotteries.

The accused was convicted with the assistance of the presumption contained in section 11 of the Common Gaming Houses Ordinance and it is accordingly not clear from the record what actual part he was taking in the conduct of the lottery or lotteries in question or whether he was taking such part as a principal or as